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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	JOSEPH M. GALLEMORE II,)	Case No. CV 14-1177 RNB
12	Plaintiff,)	
13	vs.)	ORDER REVERSING DECISION OF
14	CAROLYN COLVIN, Acting)	COMMISSIONER AND REMANDING
15	Commissioner of Social Security,)	FOR FURTHER ADMINISTRATIVE
16	Defendant.)	PROCEEDINGS

18 Plaintiff filed a Complaint herein on February 26, 2014, seeking review of the
19 Commissioner’s denial of his applications for Disability Insurance Benefits and
20 Supplemental Security Income benefits. In accordance with the Court’s Case
21 Management Order, the parties filed a Joint Stipulation on October 23, 2014. Thus,
22 this matter now is ready for decision.¹

24 ¹ As the Court advised the parties in its Case Management Order, the
25 decision in this case is being made on the basis of the pleadings, the administrative
26 record (“AR”), and the Joint Stipulation (“Jt Stip”) filed by the parties. In accordance
27 with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined
28 which party is entitled to judgment under the standards set forth in 42 U.S.C. §
(continued...)

1 **DISPUTED ISSUES**

2 As reflected in the Joint Stipulation, the disputed issues that plaintiff is raising
3 as the grounds for reversal and remand are as follows:

4 1. Whether the Administrative Law Judge (“ALJ”) made a
5 proper step two determination.

6 2. Whether the ALJ properly considered the opinion of
7 plaintiff’s treating nurse practitioner.

8 3. Whether the ALJ made a proper adverse credibility
9 determination.

10
11 **DISCUSSION**

12 For the reasons discussed hereafter, the Court concurs with the Commissioner
13 that reversal is not warranted based on the ALJ’s failure to make a proper step two
14 determination, or based on the ALJ’s alleged failure to make a proper adverse
15 credibility determination. However, the Court concurs with plaintiff that the ALJ
16 failed to properly consider the opinion of the treating nurse practitioner.

17
18 **A. Reversal is not warranted based on the ALJ’s failure to make a proper**
19 **step two determination.**

20 Disputed Issue One is directed to the ALJ’s exclusion of plaintiff’s back
21 condition from his step two determination. (See Jt Stip at 3-7.)

22 Step two of the Commissioner’s sequential evaluation process requires the ALJ
23 to determine whether an impairment is severe or not severe. See 20 C.F.R.
24 §§ 404.1520(a), 416.920(a). The Social Security Regulations and Rulings, as well
25 as case law applying them, discuss the step two severity determination in terms of

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28 ¹(...continued)
405(g).

1 what is “not severe.” According to the Commissioner’s regulations, an impairment
2 is not severe if it does not significantly limit the claimant’s physical or mental ability
3 to do basic work activities.” See 20 C.F.R. §§ 404.1520(c), 404.1521(a), 416.920(c),
4 416.921(a). Basic work activities are “abilities and aptitudes necessary to do most
5 jobs,” including “[p]hysical functions such as walking, standing, sitting, lifting,
6 pushing, pulling, reaching, carrying, or handling.” Basic work activities also include
7 mental activities such as understanding, carrying out, and remembering simple
8 instructions; use of judgment; responding appropriately to supervision, co-workers,
9 and usual work situations; and dealing with changes in a routine work setting. See
10 20 C.F.R. §§ 404.1521(b), 416.921(b); Social Security Ruling (“SSR”) 85-28. The
11 Ninth Circuit has described step two as “a de minimis screening device to dispose of
12 groundless claims.” See Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir. 1996); see
13 also Webb v. Barnhart, 433 F.3d 683, 687 (9th Cir. 2005).

14 Here, the record reflects that Dr. Nicola reviewed plaintiff’s medical file and
15 examined him for complaints of lower back pain. (See AR 244-49.) During the
16 examination, Dr. Nicola observed, inter alia, that plaintiff had a mildly antalgic gait,
17 mild lumbar guarding, tenderness of the left lumbar paraspinals at L4-5, significant
18 hypertonicity of the lumbar paraspinals bilaterally at T12-L5, positive results on
19 Yoman’s test and Kemp’s test, bilateral lumbar and buttock pain, and mild subjective
20 loss of sensation to pinprick upon neurological examination. (See AR 246.) Dr.
21 Nicola also noted that a December 2006 MRI of plaintiff’s lumbar spine revealed
22 straightening of lumbar lordosis, asymmetric annular bulging with annular tear on the
23 left L5-S1 level, and narrowing of the lateral recess and inferior recess of the left
24 neural foramen. (See AR 244.) Dr. Nicola also noted that Dr. Duke had diagnosed
25 degenerative lumbar spondylosis with lumbar strain. (See id.)

26 Although the ALJ briefly mentioned plaintiff’s back condition in his decision
27 (see AR 19, 20), he excluded the impairment from his step two determination without
28 explanation (see AR 17). The Court concurs with plaintiff that the ALJ erred by

1 failing to properly consider plaintiff's back condition as part of the step two
2 determination, particularly in light of Dr. Nicola's uncontroverted findings. In other
3 words, the medical evidence did not clearly establish that plaintiff's back condition
4 was a non-severe impairment. See Webb v. Barnhart, 433 F.3d 683, 685, 688 (9th
5 Cir. 2005) (ALJ's non-severity determination was not clearly established where the
6 medical evidence of claimant's back condition reflected disc space narrowing,
7 suspicion of degenerative disc disease, and disc fragmentation or significant
8 herniation).

9 Nonetheless, the Court finds that the ALJ's failure to list plaintiff's back
10 condition as a severe impairment was harmless error because the ALJ considered any
11 limitations that could be imposed by the back condition during the remainder of the
12 sequential evaluation process. See Lewis v. Astrue, 498 F.3d 909, 911 (9th Cir.
13 2007) (concluding that any failure to list bursitis as severe at step two was harmless
14 error where ALJ considered any functional limitations imposed by the bursitis at step
15 four); Burch v. Barnhart, 400 F.3d 676, 682-84 (9th Cir. 2005) (concluding that any
16 failure to list obesity as severe at step two was harmless error where ALJ considered
17 any functional limitations imposed by the obesity at steps three and five and in the
18 RFC determination). Here, the ALJ incorporated any limitations that could be
19 imposed by plaintiff's back condition in the RFC determination, which limited
20 plaintiff to sedentary work with various limitations to accommodate the back
21 condition, such as lifting and/or carrying less than 10 pounds frequently and 10
22 pounds occasionally, standing/walking for a total of 2 hours in an 8-hour workday,
23 using a cane for extended ambulation, and repositioning himself every 30 minutes.
24 (See AR 18.)² The ALJ then presented these limitations to the vocational expert, who

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27 ² The ALJ's RFC determination in its entirety limited plaintiff to sedentary
28 work with the following limitations: "lift and/or carry less than 10 pounds frequently
(continued...)

1 testified that a person with such limitations could perform work existing in significant
2 numbers in the national economy. (See AR 22, 45-47.) Plaintiff has failed to identify
3 any additional limitations from the back condition that the ALJ failed to incorporate.
4 See Burch, 400 F.3d at 684 (ALJ adequately considered claimant’s obesity despite
5 failure to list it as a severe impairment where he “presented all of [her] limitations and
6 restrictions supported by the record to the vocational expert”).

7 Accordingly, the Court finds that reversal is not warranted based on the ALJ’s
8 failure to make a proper step two determination.

9
10 **B. Reversal is not warranted based on the ALJ’s alleged failure to make a**
11 **proper adverse credibility determination with respect to plaintiff’s**
12 **subjective symptom testimony.**

13 Disputed Issue Three is directed to the ALJ’s adverse credibility determination
14 with respect to plaintiff’s subjective symptom testimony. (See Jt Stip at 12-20.)

15 An ALJ’s assessment of pain severity and claimant credibility is entitled to
16 “great weight.” Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v.
17 Heckler, 779 F.2d 528, 531 (9th Cir. 1986). Under the “Cotton test,” where as here
18 the claimant has produced objective medical evidence of an impairment which could
19 reasonably be expected to produce some degree of pain and/or other symptoms, and
20 the record is devoid of any affirmative evidence of malingering, the ALJ may reject

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22 ²(...continued)

23 and 10 pounds occasionally; stand/walk for a total of 2 hours in an 8-hour workday;
24 needs a medically-required hand held device (i.e., cane) for excluded ambulation; sit
25 for a total of 6 hours in an 8-hour workday but every 30 minutes must be free to
26 reposition himself to relieve discomfort but does not have to leave the workstation;
27 occasionally climb ramps/stairs, balance, stoop, overhead reaching and working
28 overhead; never climb ladders/ropes/scaffolds, crouch, kneel, and crawl; frequently
perform gross handling and fine fingering; and avoid concentrated exposure to
hazardous machinery and unprotected heights.” (See AR 18.)

1 the claimant’s testimony regarding the severity of the claimant’s pain and/or other
2 symptoms only if the ALJ makes specific findings stating clear and convincing
3 reasons for doing so. See Cotton v. Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986); see
4 also Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir. 1996); Dodrill v. Shalala, 12
5 F.3d 915, 918 (9th Cir. 1993); Bunnell v. Sullivan, 947 F.2d 341, 343 (9th Cir. 1991)
6 (en banc).

7 Here, plaintiff alleged that he cannot work because of severe back pain, hip
8 pain, arthritis throughout his body, gout, and renal disease. (See AR 32; see also AR
9 53.) Plaintiff also testified that on account of his impairments, he required use of a
10 cane and was limited to sitting for 15 minutes at a time and walking for 10-15
11 minutes at a time. (See AR 39, 43.) Plaintiff also testified that his pain was
12 “excruciating” and that his conditions cause him to “swell up in my wrists and my
13 ankles and feet regardless of whatever I do.” (See AR 38.) Plaintiff also testified that
14 he was able to bathe, dress, and prepare simple meals for himself. (See id.)

15 The ALJ determined that, although plaintiff’s medically determinable
16 impairments could reasonably be expected to cause the alleged symptoms, plaintiff’s
17 symptoms concerning the intensity, persistence, and limiting effects of these
18 symptoms were not credible to the extent they were inconsistent with the ALJ’s RFC
19 assessment. (See AR 19.) As support for this adverse credibility determination, the
20 ALJ stated three reasons. (See AR 19-21.)

21 First, the ALJ found that plaintiff’s activities of daily living, “including
22 bathing, dressing, and preparing meals for himself, for example, are inconsistent with
23 his allegation of total disability.” (See AR 19.) Although these stated activities
24 appear somewhat limited and basic, the Court nonetheless finds that they constituted
25 a legally sufficient reason on which the ALJ could properly rely in support of his
26 adverse credibility determination, especially because they contradicted plaintiff’s
27 allegations that he was totally debilitated by “excruciating” pain and that he
28 experienced swelling “regardless of whatever I do.” See Molina v. Astrue, 674 F.3d

1 1104, 1113 (9th Cir. 2012) (“Even where those activities suggest some difficulty
2 functioning, they may be grounds for discrediting the claimant’s testimony to the
3 extent that they contradict claims of a totally debilitating impairment.”); Berry v.
4 Astrue, 622 F.3d 1228, 1234-35 (9th Cir. 2010) (evidence that claimant’s self-
5 reported activities suggested a higher degree of functionality than reflected in
6 subjective symptom testimony adequately supported adverse credibility
7 determination); Valentine v. Commissioner Social Sec. Admin., 574 F.3d 685, 693
8 (9th Cir. 2009) (evidence that claimant exercised and undertook projects suggested
9 that claimant’s later claims about the severity of his limitations were exaggerated);
10 Bray v. Commissioner of Social Security Admin., 554 F.3d 1219, 1227 (9th Cir.
11 2009) (“In reaching a credibility determination, an ALJ may weigh consistencies
12 between the claimant’s testimony and his or her conduct, daily activities, and work
13 record, among other factors.”); Orn v. Astrue, 495 F.3d 625, 639 (9th Cir. 2007)
14 (evidence of daily activities may form basis of an adverse credibility determination
15 where it contradicts the claimant’s other testimony).

16 Second, the ALJ found that the medical record did not substantiate plaintiff’s
17 allegations of disabling limitations in various respects. (See AR 19.) The ALJ
18 specifically noted that (1) medication side effects were mentioned with very little
19 frequency in the medical records; (2) plaintiff’s exhibited a full range of motion of
20 the extremities with left knee effusion; (3) his back, abdominal, and neurological
21 examinations were normal; (4) his chest x-ray was normal; and (5) an examining
22 physician found him capable of medium work. (See AR 19; see also AR 268-73,
23 314.) Preliminarily, the Court notes that, contrary to the ALJ’s finding that plaintiff’s
24 back and neurological examinations were normal, the record reflects, as detailed
25 above, that Dr. Nicola found irregularities upon his examination of plaintiff’s lumbar
26 spine and review of the record. (See AR 244-49.) The Court also notes that the ALJ
27 failed to discuss evidence of plaintiff’s limitations in his fingers due to his gout and
28 arthritis. (See AR 296, 299, 302, 304, 307.) Nonetheless, the Court finds that the

1 crux of the ALJ’s reasoning – that the medical record on the whole did not
2 corroborate plaintiff’s allegations of debilitating symptoms such as excruciating pain
3 and swelling – was supported by substantial evidence. The Court therefore finds that
4 this was a legally sufficient reason on which the ALJ could properly rely in support
5 of his adverse credibility determination. See Morgan v. Comm’r of Soc. Sec., 169
6 F.3d 595, 600 (9th Cir. 1999) (ALJ may properly consider conflict between
7 claimant’s testimony of subjective complaints and objective medical evidence in the
8 record); Tidwell v. Apfel, 161 F.3d 599, 602 (9th Cir. 1998) (ALJ may properly rely
9 on weak objective support for the claimant’s subjective complaints); Orteza v.
10 Shalala, 50 F.3d 748, 750 (9th Cir. 1995) (ALJ may properly rely on lack of objective
11 evidence to support claimant’s subjective complaints).

12 Third, the ALJ found that plaintiff’s verbal responses and overall demeanor at
13 the administrative hearing “were not suggestive of a person who is experiencing
14 disabling limitations.” (See AR 21.) The ALJ specifically noted that plaintiff “was
15 able to enter and exit the hearing room without much difficulty, and to answer
16 questions quite thoroughly and clearly.” (See id.) Although plaintiff’s observed
17 ability to answer questions properly seems inapposite to his alleged limitations
18 (which were physical), the Court nonetheless finds that this was a legally sufficient
19 reason on which the ALJ could properly rely in support of his adverse credibility
20 determination. The ALJ could have reasonably concluded that plaintiff’s observed
21 ability to enter and exit the hearing room belied his testimony to experiencing
22 excruciating pain and swelling regardless of what he did. See Drouin v. Sullivan, 966
23 F.2d 1255, 1259 (9th Cir. 1992) (ALJ could properly include his personal observation
24 that there was no indication that claimant was suffering pain during the hearing as
25 part of adverse credibility determination); see also Morgan, 169 F.3d at 600
26 (inclusion of ALJ’s personal observations of claimant did not render adverse
27 credibility determination improper) (citations omitted); Verduzco v. Apfel, 188 F.3d
28 1087, 1090 (9th Cir. 1999) (same); Quang Van Han v. Bowen, 882 F.2d 1453, 1458

1 and n.8 (9th Cir. 1989) (same); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985)
2 (same).

3 Accordingly, the Court finds that reversal is not warranted based on the ALJ's
4 alleged failure to make a proper adverse credibility determination.

5
6 **C. The ALJ failed to properly consider the treating nurse practitioner's**
7 **opinion.**

8 Disputed Issue Two is directed to the ALJ's consideration of the opinion of Mr.
9 James Gocke, plaintiff's treating nurse practitioner. (See Jt Stip at 7-12.)

10 In general, only licensed physicians and similarly qualified specialists qualify
11 as acceptable medical sources under the Commissioner's regulations. See 20 C.F.R.
12 §§ 404.1513(a), 416.913(a). Other medical providers, such as nurse practitioners, are
13 generally classified as "other sources" under the Commissioner's regulations. See 20
14 C.F.R. §§ 404.1513(d)(1), 416.913(d)(1). An ALJ may properly reject an opinion
15 from an "other source" by providing reasons germane to that opinion. See Molina,
16 674 F.3d at 1111 ("The ALJ may discount testimony from these other sources if the
17 ALJ gives reasons germane to each witness for doing so."); Turner v. Commissioner
18 of Social Sec., 613 F.3d 1217, 1224 (9th Cir. 2010) (same).

19 Here, Mr. Gocke completed a "Physical Residual Functional Capacity
20 Questionnaire" describing plaintiff's limitations from hypertension, gouty arthritis,
21 and chronic lower back pain. (See AR 294-96.) In the questionnaire, Mr. Gocke
22 opined that plaintiff was limited to occasionally lifting 10 pounds at a time, standing
23 and/or walking for less than 2 hours in an 8-hour workday, and sitting for less than
24 6 hours in an 8-hour workday. (See AR 294-95.) Mr. Gocke also opined that
25 plaintiff's manipulative activities were affected by gout and arthritis so that plaintiff
26 was limited to occasional handling and precluded from any fingering. (See AR 296.)

27 The ALJ did not afford significant weight to Mr. Gocke's opinion for three
28 reasons. (See AR 21.) The Court finds that none of the ALJ's stated reasons was a

1 legally sufficient reason on which the ALJ could properly rely for not affording
2 significant weight to the nurse practitioner’s opinion.

3 One of the ALJ’s stated reasons was that Mr. Gocke’s opinion was “without
4 any supporting medical findings.” (See AR 21.) The ALJ specifically noted that
5 there were no longitudinal record or medical findings; that the opinion was brief and
6 conclusionary in form with little in the way of clinical findings to support its
7 conclusion; that the record was devoid of any description of detailed examining or
8 physical findings related to plaintiff’s musculoskeletal structure; and that the record
9 did not contain any laboratory tests, such as x-rays and MRI scans, which would
10 support his opinion. (See id.) Contrary to the ALJ’s characterization of Mr. Gocke’s
11 opinion and the record, Mr. Gocke’s opinion did have supporting clinical findings
12 and the record did contain detailed examining and physical findings, as well as
13 laboratory tests such as x-rays and MRI scans. Specifically, Mr. Gocke’s opinion
14 clearly stated that he was supporting his conclusions with the following clinical
15 findings: a tender lumbar spine; the MRI from December 2006³; poor grip in the
16 hands indicating edema of the joints; and limited joint motion in the hands. (See AR
17 294, 296.) Moreover, the record contains detailed findings and laboratory tests, such
18 as x-rays and MRI scans, supporting Mr. Gocke’s opinion: (1) as noted, the detailed
19 examining findings and review of the record conducted by Dr. Nicola; (2) an x-ray
20 evidencing mild osteoarthritis of the left knee with associated joint space narrowing,
21 osteophytes, and subchondral sclerosis; (3) an examining finding by Dr. Duke of
22 degenerative lumbar spondylosis with lumbar strain; (4) treatment records for
23 plaintiff’s gout and arthritis; and (5) as noted, the MRI from December 2006. (See
24 AR 244-46, 264, 299, 302, 304, 307.)

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26 ³ As noted, that MRI revealed that plaintiff’s lumbar spine had
27 straightening of lumbar lordosis, asymmetric annular bulging with annular tear on the
28 left L5-S1 level, and narrowing of the lateral recess and inferior recess of the left
neural foramen. (See AR 244.)

1 Another reason stated by the ALJ for not affording significant weight to Mr.
2 Gocke’s opinion was that Mr. Gocke appeared “to have accepted [plaintiff’s]
3 subjective complaints” and to have acted as his “advocate.” (See AR 21.) To the
4 contrary, the opinion reflects that Mr. Gocke based it more heavily on independent
5 clinical findings rather than on plaintiff’s subjective complaints, and the record is
6 devoid of evidence suggesting that Mr. Gocke improperly acted as plaintiff’s
7 advocate. The Ninth Circuit has held that an ALJ may not presume that a physician’s
8 opinion was improperly influenced where it was based more heavily on the
9 physician’s clinical observations than on the claimant’s subjective complaints, see
10 Ghanim v. Colvin, 763 F.3d 1154, 1162 (9th Cir. 2014); and where there was no
11 evidence of actual improprieties, see Nguyen v. Chater, 100 F.3d 1462, 1464 (9th Cir.
12 1996). This authority applies with equal force to Mr. Gocke’s opinion. See
13 generally Frantz v. Astrue, 509 F.3d 1299, 1302 (10th Cir. 2007) (noting that factors
14 for assessing physicians’ opinions apply equally to assessing opinions from other
15 sources such as nurse practitioners) (citing Social Security Ruling [“SSR”] 06-03p,
16 1996 WL 2329939, at *4).⁴

17 Another reason stated by the ALJ for not affording significant weight to Mr.
18 Gocke’s opinion was that Mr. Gocke was not an acceptable medical source under the
19 Commissioner’s regulations. (See AR 21.) The parties do not dispute, and the Court
20 concurs, that Mr. Gocke was not an acceptable medical source, but was an “other
21 source” under the Commissioner’s regulations. (See Jt Stip at 7, 9.) Nonetheless, the
22 ALJ still was required to provide legally sufficient reasons for not affording
23 significant weight to Mr. Gocke’s opinion. See SSR 06-03p, 2006 WL 2329939, at
24 *3 (noting that opinions from other sources such as nurse practitioners “are important
25 and should be evaluated on key issues such as impairment severity and functional
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27 ⁴ Social Security Rulings are binding on ALJs. See Terry v. Sullivan, 903
28 F.2d 1273, 1275 n.1 (9th Cir. 1990).

1 effects”); Ghanim, 763 F.3d at 1161 (opinion of nurse practitioner who qualifies as
2 an other source “must still be evaluated”); Frantz, 509 F.3d at 1302 (ALJ erred by
3 failing to properly consider opinion of nurse practitioner who qualified as an other
4 source). The ALJ did not provide any such legally sufficient reasons here.

5 Accordingly, the Court finds that reversal is warranted based on the ALJ’s
6 failure to properly consider the nurse practitioner’s opinion.⁵

8 CONCLUSION AND ORDER

9 The law is well established that the decision whether to remand for further
10 proceedings or simply to award benefits is within the discretion of the Court. See,
11 e.g., Salvador v. Sullivan, 917 F.2d 13, 15 (9th Cir. 1990); McAllister v. Sullivan,
12 888 F.2d 599, 603 (9th Cir. 1989); Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir.
13 1981). Remand is warranted where additional administrative proceedings could
14 remedy defects in the decision. See, e.g., Kail v. Heckler, 722 F.2d 1496, 1497 (9th
15 Cir. 1984); Lewin, 654 F.2d at 635. Remand for the payment of benefits is
16 appropriate where no useful purpose would be served by further administrative
17 proceedings, Kornock v. Harris, 648 F.2d 525, 527 (9th Cir. 1980); where the record
18 has been fully developed, Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986);
19 or where remand would unnecessarily delay the receipt of benefits, Bilby v.

21 ⁵ Although Mr. Gocke’s opinion was similar to the ALJ’s RFC
22 determination in some respects, they notably differed as to plaintiff’s ability to
23 perform manipulative activities: Mr. Gocke opined that plaintiff was limited to
24 occasional handling and precluded from any fingering, while the ALJ found that
25 plaintiff could perform frequent handling and fingering. (Compare AR 296 with AR
26 18.) Since the ALJ eventually concluded that plaintiff was not disabled because he
27 could perform a job (i.e., order clerk [DOT No. 209.567-014]) that requires frequent
28 handling and fingering, the Court is unable to find that the ALJ’s failure to properly
consider Mr. Gocke’s opinion, particularly as to plaintiff’s manipulative limitations,
was harmless error.

1 Schweiker, 762 F.2d 716, 719 (9th Cir. 1985).

2 The Court is mindful that, in Garrison v. Colvin, 759 F.3d 995, 1019-21 (9th
3 Cir. 2014), a Ninth Circuit panel held that where an ALJ failed to properly consider
4 various types of evidence, it was appropriate to credit the evidence as true and remand
5 the case for calculation and award of benefits. However, the Court also notes that
6 after Garrison was decided, another Ninth Circuit panel did not apply or even
7 acknowledge this “credit as true” rule where substantial evidence did not support an
8 ALJ’s rejection of treating medical opinions and his adverse credibility
9 determination; instead, the panel simply remanded the case for further administrative
10 proceedings. See Ghanim, 763 F.3d at 1167. In any event, to the extent that Garrison
11 governs the Court’s analysis, the Court finds it distinguishable, as discussed below.

12 In Garrison, the Ninth Circuit held that the district court should remand to the
13 Commissioner for an award of benefits if three conditions are met: (1) the record has
14 been fully developed and further administrative proceedings would serve no useful
15 purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting
16 evidence, whether claimant testimony, physician’s opinion, or opinion from an “other
17 source”; and (3) if the improperly discredited evidence were credited as true, the ALJ
18 would be required to find the claimant disabled on remand. See Garrison, 759 F.3d
19 at 1020. Here, remand for further proceedings is warranted because the third
20 Garrison condition has not been met: the vocational expert did not testify that a
21 person could not work with the limitations described by Mr. Gocke. See Harman v.
22 Apfel, 211 F.3d at 1172, 1180 (9th Cir. 2000) (remanding for further proceedings in
23 part because there was no testimony from the vocational expert that the limitations
24 established by the improperly discredited evidence would render claimant unable to
25 engage in any work); see also Strauss v. Commissioner of the Social Sec. Admin.,
26 635 F.3d 1135, 1138 (9th Cir. 2011) (reversal for award of benefits is appropriate
27 only where the record demonstrates claimant is disabled within meaning of Social
28 Security Act).

1 Therefore, based on its review and consideration of the entire record, the Court
2 has concluded on balance that a remand for further administrative proceedings
3 pursuant to Sentence Four of 42 U.S.C. § 405(g) is warranted here. Accordingly, IT
4 IS HEREBY ORDERED that Judgment be entered reversing the decision of the
5 Commissioner of Social Security and remanding this matter for further administrative
6 proceedings.⁶

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8 DATED: November 7, 2014



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10 ROBERT N. BLOCK
11 UNITED STATES MAGISTRATE JUDGE
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28 ⁶ It is not the Court's intent to limit the scope of the remand.